

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States of America)	
)	Cr. No. 6:04-0112-HMH
vs.)	C/A No. 6:05-1238-HMH
)	
Francisco Cazarez Castillo,)	ORDER
)	
Movant.)	

This matter is before the court on Francisco Cazarez Castillo's ("Castillo") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On April 27, 2004, Castillo pled guilty to distributing 500 grams or more of cocaine, methamphetamine possession with intent to distribute in the amount of 50 grams or more, and felon in possession of a firearm. Castillo was sentenced on August 30, 2004, to two hundred thirty-five (235) months' imprisonment.

On September 29, 2004, Castillo appealed his conviction and sentence. The instant motion was filed on April 26, 2005.¹ Because his direct appeal is still pending, the court lacks jurisdiction to consider Castillo's § 2255 motion. Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (finding that filing a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.") As such, Castillo's collateral attack of his conviction and sentence under 28 U.S.C. § 2255 is premature. See Pratt v. United States, 129 F.3d 54, 61 (1st Cir. 1997); Walker v. Connor, No. 02-7459, 2003 WL 21660483, *4 (th Cir. Jul 16, Ping v. United

¹ Houston v. Lack, 487 U.S. 266 (1988)

States, No. 01-9230, 2001 WL 1588924, at *1 (S.D.N.Y. Dec. 12, 2001) (unpublished); United States v. Massey, No. 301-1192R, 2001 WL 1076131, at *1 (N.D. Tex. Sept. 10, 2001) (unpublished). Therefore, after a thorough review of the facts and pertinent law, the court dismisses Castillo's § 2255 motion.

Therefore, it is

ORDERED that Castillo's § 2255 motion is dismissed without prejudice.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
May 9, 2005

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.